

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, APRIL 27, 2004**

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of April 27, 2004, was called to order by Mayor Hansen at 7:02 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land (arrived at 8:20 p.m.), and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

B. PUBLIC HEARINGS

- B-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider adopting resolution adjusting water, sewer, and refuse rates and charges.

Public Works Director Prima reported that the City has a franchise agreement with Central Valley Waste Services (CVWS) that was approved by Council in 2002 and runs through 2010. In the first two years there is a built-in 1.5% increase, beyond which the agreement calls for an increase of 80% of the Consumer Price Index (CPI). The increases are scheduled for April; however, because of the issues with water and wastewater, CVWS was asked to delay it to this meeting. Mr. Prima noted that the CVWS contract provides for additional changes in the rates due to extraordinary expenses. CVWS is required to use the north county landfill on east Harney Lane, which increased its rates in January from \$24.41 to \$27 a ton. These rate increases are shown in Exhibit C of the staff report (filed). The CPI increase amounts to 1.5% and the landfill increase is 1.2% resulting in a 52 cent per month increase for residential carts effective May 2004.

Mr. Prima recalled that the Water Utility last increased its rates in 2002 specifically for embarking on a major infrastructure replacement program. The increase amounted to \$7 a month for a three-bedroom home. An increase is now needed to cover the Woodbridge Irrigation District (WID) water purchase, which was approved by Council last year at a cost of \$1.2 million annually for 40 years. In addition, \$800,000 a year has been built into the rate increase to cover the ongoing Environmental (PCE/TCE) Abatement Program (EAP) litigation. The rate increase is shown on Table A, which amounts to \$6.81 a month for a three-bedroom home effective May 2004.

In answer to Mayor Hansen, Mr. Prima reported that groundwater overdraft in the Lodi area has been going on for over a hundred years. Lodi's water system is entirely supplied by groundwater.

Mr. Prima acknowledged that many complaints were received from the public about the City's policy of basing rates by the number of bedrooms, which does not allow customers to benefit from conservation efforts. He reported that there have been a number of State bills that have inched toward mandating water meters in California. He estimated that it would take more than ten years to install water meters in the entire City and he discussed the feasibility of doing so.

Council Member Hitchcock advocated water meters; however, she noted that for the past ten years new home owners have paid for water meters and she did not believe the City should pay for those who have not.

Council Member Howard believed that water meters were the best solution for the equity issue that many citizens have raised about the City's billing practices.

Mr. Prima believed there would be a way to shift to water meters without impacting water rates.

Mayor Pro Tempore Beckman asked Mr. Prima to bring back options for Council to consider related to transitioning to water meters.

Mr. Prima continued his report and noted that the proposed rate increases do not include facilities to utilize the WID water or past expenses related to the EAP litigation.

Mayor Hansen acknowledged that the former EAP strategy failed. An order has been issued by the State to require the City of Lodi and currently identified Potentially Responsible Parties in the central plume area to develop a work plan for cleaning up the groundwater contamination. The Council is trying to minimize the impact as much as possible to the community. The City has the responsibility as the water purveyor to make sure that the water is safe to drink. The monitoring process will extend for the next three decades or more because the soil contamination in Lodi is one of the worst that the State regulatory agencies have ever seen.

Mr. Prima reported that wastewater rates increased a couple of years ago in the amount of \$7.33 a month for a three-bedroom home, for the purpose of funding an infrastructure replacement program. The proposed wastewater rate increase is solely going toward State mandated improvements of the White Slough Water Pollution Control Facility. The project will be financed through Certificates of Participation (COP). The rate increase will cover the debt service for the COP, as well as the operation and maintenance costs associated with the new upgraded facility. The wastewater rate increases are shown on Table B. Rates for a three-bedroom home will increase \$9.11 a month. Mr. Prima recalled that consultants were hired in 1999 to assist staff in planning for regulatory compliance and a series of public advisory and Council meetings were held to review the planning process. The City obtained a permit in February 2000, which required tertiary filters and the Title 22 standard that the City must meet for the water that it will be discharging. Later in 2000, the state adopted an implementation plan, which sets background for future permits. In 2003, a pilot study was done on cloth media filters, which staff is now recommending for the project. The project was broken into phases to help with cash flow and rate impacts. Phase 1 aeration improvements are nearing completion. Phase 2 will include installing filters, changing to ultra violet light disinfection, and eliminating the old chlorine system. The State's goal is to improve the water quality in the Delta, as it is a major source of drinking water. Negotiations for the next permit will begin in 2005.

In reply to Council Member Howard, Mr. Prima confirmed that the City will be receiving \$385,000 from the Environmental Protection Agency.

Mayor Pro Tempore Beckman noted that the City of Manteca is one permit level ahead of Lodi. It has been determined that the cleanest spot on the river is where Manteca discharges its effluent. Currently Manteca's sewer rate is \$23.48, which is projected to increase to \$130 a month in order to meet requirements of the Regional Water Quality Control Board. He suggested that Lodi join with Manteca and protest the regulations.

Mayor Hansen replied that some cities have gone through court proceedings to fight the State's mandates and it resulted in even further increases in costs. He recommended that Lodi follow the State's guidelines and avoid the \$10,000 a day penalty that would result in failing to do so.

Mr. Prima continued his report, noting that the infrastructure program will stay in place. Council previously directed that transfers to the General Fund be reduced so that all of the increased revenue from the rate increases will go to the utilities. The proposed rate resolution includes a provision to do an annual update in an effort to keep up with the cost of inflation. Presently the City offers a 10% discount on water, sewer, and refuse for qualifying low-income customers. He recommended that the same qualifying criteria be used for all of the City's discount programs and that the discount percentage be adopted separately by resolution. He outlined all the City's low-income discount programs and reviewed rates charged by other cities in the area.

In reply to Council Member Hitchcock, Mr. Prima pointed out that in Section 3 on the resolution "blue sheet" (filed) establishing rates; it states that they "may" be adjusted periodically. In the wastewater revenue model, an annual increase of 3% was assumed.

NOTE: Council Member Land arrived at 8:20 p.m.

Mayor Hansen commented that he was very much in favor of having discounts for senior citizens and low-income members of the community.

Council Member Hitchcock pointed out that the City's policy of charging by number of bedrooms does not allow citizens the ability to conserve water and save on their bills, and for this reason, it is important to offer a discount program.

Council Member Land asked if utility customers can qualify for a lower rate if they have converted a bedroom to some other use or remodeled two bedrooms into one. Mr. Prima replied in the affirmative and noted that, in these circumstances, residents can call Public Works and they will send a staff member to inspect the home and adjust the rate accordingly.

Hearing Opened to the Public

- Fred Bunnell, Jr. was opposed to the rate increases. He suggested that the City charge by occupancy instead of number of bedrooms. He believed that water meters would be a more equitable system.
- Donald Walters stated that he lives in a four-bedroom home; however, one is used for a sewing room, one for storage, and the third only for out-of-town guests. He believed the current system of charging by number of bedrooms was unfair.
- Bill Crow expressed opposition to the high amount of rate increases and felt that they should have been increased in small percentages annually.
- Lee Elwood reviewed his past utility bills and opposed the rate increases. He found the line item breakdowns on the bills confusing to interpret. He blamed the City Council, past and present, for getting the City into a bad situation, which resulted in higher rates for its citizens. In addition, he complained that the City Manager has been allowing water funds to be used for other purposes.
- Eunice Friederich believed that the proposed rates were excessive and that residents with swimming pools should be imposed a higher rate. She also favored charging by occupancy instead of number of bedrooms. She reviewed her past utility bills and noted that she owns two homes and one is unoccupied. The Finance Department has informed her that water and wastewater must remain connected even if a home is vacant. She asked Council to change the policy and allow people to discontinue water and wastewater service while on vacation. She suggested that customers sign a statement regarding how many people are occupying a home and charge rates accordingly.

Maxine Cadwallader, Revenue Manager, confirmed that the vacation policy does not allow for disconnection of water and wastewater services. There is a provision for ceasing refuse pick up during vacations. She noted, however, that if a home is vacant it can be put on inactive status with all the utilities disconnected.

- Viola Borth believed the policy of charging per number of bedrooms was unfair and recommended that it be based according to occupancy.
- Robert Emmer reviewed his past utility bills since 1998. He found the increased rates disconcerting in light of recent actions related to the groundwater contamination lawsuit. He objected to attorney fees and City transit charges being deducted from utility funds. He asked Council to adopt a policy separating ratepayer fees (to be used only for providing utilities), and general taxes (to be used for City services), and eliminate commingling of these funds. He asked how long citizens would be paying for the infrastructure replacement program and suggested that developers and new residents should be paying more for these costs.

Mr. Prima stated that the infrastructure replacement program is a "pay as you go," ongoing program. He explained that state law prohibits charging development fees to correct existing deficiencies.

Mayor Pro Tempore Beckman pointed out that increases related to the WID water purchase, remediation of EAP litigation, and upgrades to the White Slough facility are all finite expenses that can be budgeted out. He recalled specifically requesting that an end date to the fees be placed on the utility bills and stated that without that assurance he would not support them.

Public Portion of Hearing Closed

Council Member Land reported that Council received many written protests with comments and he read each of them. He read a protest letter from Thelma Fisher, who had pointed out that a three-bedroom house is 97 cents per bedroom higher than a seven-bedroom house. Mr. Land felt that the rate should be the same for all bedrooms.

Mr. Prima commented that a large portion of water usage in a home is expended outdoors on landscaping.

RECESS

At 9:40 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 9:50 p.m.

B. PUBLIC HEARING (Continued)

B-1 City Clerk Blackston reported that the total number of properties on which the rates and (Cont'd.) charges are imposed as shown on the last equalized assessment roll of San Joaquin County at the time the public notices were mailed, was 18,387. Proposition 218 "The Right to Vote on Taxes Act," included the addition of Article 13D, Section 6, subsection 2, of the California Constitution, which states in part: "If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge." A majority in this case would be 9,194. She reported that City Clerk staff personally received and assembled all written protests returned by mail or delivered in person and certified the results of the tabulation of written protests to be 734.

Mayor Pro Tempore Beckman felt it was important that all ratepayers know how much the average person would have to pay each month in order to account for the lower rates charged to economically-challenged citizens. He pointed out that it is not possible to give discounts to certain citizens without it affecting the remaining ratepayers. He believed that taking more money from one group of citizens in order to charge another group less, is committing an act of government charity. Further he stated that taking someone's money through taxes, fees, and rates in order to give to the poor is government extortion. He contended that having a two-tiered rate system is wrong. He offered citizens who are unable to get assistance through local charities to call him. He believed that when recipients of charity receive money from the government, a sense of entitlement is created. In conclusion he expressed his opinion that government subsidy is part of the problem, not part of the solution. He had faith in community members to take care of the needy.

Mayor Hansen responded that he saw the discount program as an attempt by government to lessen the impact of the hardship that government created. He noted that a large percentage of the Lodi population is comprised of senior citizens on fixed incomes. He cautioned that increasing the cost of government services could push some of these individuals onto the street.

Council Member Hitchcock felt that a discount program based on income was a good idea because the water and wastewater utilities are not a service that can be opted out of, nor can reduction in use decrease ratepayers' bills. She agreed that it was important to include an end date to the rate increases so that ratepayers can ascertain what they are paying for and when it will conclude.

Council Member Howard also agreed that bills should include a description and itemization of each of the charges.

In reference to Mr. Beckman's earlier statements, Council Member Land stated that there is a difference between subsidy and entitlement, the latter of which he did not support. He preferred that there be periods of subsidy/rate reductions for people in need; however, the program should include a re-qualification process. Mr. Land recalled when Council was considering adjustments to operating costs in the General Fund he had asked that the Enterprise Funds be reviewed for possible reductions. He asked whether it had been done.

City Manager Flynn replied that recommendations for budget reductions will be presented to Council at its meeting on May 19 and it will include Enterprise Funds.

Mr. Prima commented that Public Works has been carrying vacancies in Water and Wastewater Divisions for some time. In reference to itemizing charges on utility bills, he suggested that Council give specific direction and allow staff to return with recommendations for accomplishing it. He noted that part of the costs go toward operations and maintenance, which are ongoing. Determining an ending date for COPs would be difficult because, although this financing will be for a 20-year period, another COP will be issued later, and refinancing of an older COP will likely occur.

In response to Council Member Hitchcock, Mr. Prima explained that the language in Section 3 of the resolution merely shows an intention to consider rates annually. An increase would come before Council for approval.

Mayor Hansen and Council Member Hitchcock recommended that language in Section 3 of the resolution be amended as follows: "The rates shown in Exhibits A, B, & C may be adjusted periodically by resolution **with Council approval following a public hearing...**"

MOTION:

Mayor Hansen made a motion, Howard second, to adopt Resolution No. 2004-77 adjusting the water, sewer, and refuse rate schedules and adding to the resolution (under Section 3) language that subsequent adjustments will be by Council approval following a public hearing.

DISCUSSION:

Mayor Pro Tempore Beckman asked whether the discount percentages (as shown on Tables A, B, & C) were being adopted at this time, to which Mr. Prima replied that they were not. Mr. Prima acknowledged, however, that a discount program amounting to \$50,000 a year was factored into the rates. Mr. Beckman stated that he would not support the resolution because the rate structure was too high, due to the built-in discount program.

Discussion ensued regarding termination dates for the increased rates related to the WID water purchase and the PCE/TCE remediation. It was agreed to add a new section to the resolution as follows: "Termination/Sunset Rate – The portion of attached rates representing an increase from immediately proceeding rates related to the 1) water purchase contract shall sunset in 2044, 2) rates related to the White Slough Water Pollution Control Facility improvements shall sunset in 2044, and 3) the rates associated with the Environmental Abatement (PCE/TCE) Program shall sunset in 2014."

MOTION AMENDED / VOTE:

The motion was amended to read, "Adopt Resolution No. 2004-77 adjusting the water, sewer, and refuse rate schedules and adding to the resolution 1) (under Section 3) language that subsequent adjustments will be by Council approval following a public hearing and 2) a new section (Section 4) for termination/sunset rate." The motion carried by the following vote:

Ayes: Council Members – Hitchcock, Howard, Land, and Mayor Hansen

Noes: Council Members – Beckman

Absent: Council Members – None

C. REGULAR CALENDAR

- C-1 "Adopt resolution approving forms of an Installment Purchase Contract, a Certificate Purchase Contract, Official Statement, and a Continuing Disclosure Agreement relating to Wastewater System Revenue Certificates of Participation, 2004 Series A; and approving and authorizing certain other matters relating thereto"

With the aid of an overhead presentation (filed), Alex Burnett, representing Public Financial Management, recalled that this subject was reviewed at the March 30 Shirtsleeve Session. The proposal is for 20-year, fixed-rate bonds that would be serialized. The proceeds would be \$25 million. It is a traditional Certificate of Participation (COP) structure, i.e. lease financing. There are legal covenants that govern how many bonds can be issued, which is impacted by the interest rate. If rates increase, the proceeds may be adjusted down incrementally. The revenue bond index is at 5.20%, and the City will be borrowing at approximately 4.70%. With the erosion in rates, the aggregate debt service, which excludes the 2006 financing, is closer to \$3.3 million dollars and resulted in a loss of \$100,000 to \$200,000 in annual debt service. Net revenues of the Enterprise are considerably above debt service requirements. There is some capacity to add in the 2006 debt service, which is being contemplated in association with Phase 3. Consideration is being made regarding whether it is more advantageous to fund the debt service reserve fund (one year of debt service) out of bond proceeds or to purchase a surety bond. There could be an advantage to cash funding the reserve fund. Because project funds will be invested "very short" there will be significant cost of carry on the money. Earnings will be roughly 1.50% and borrowing will be at 4.50%. The way the loss can be recouped is by investing the reserve fund at a yield higher than 4.60%. Currently there would be a \$275,000 advantage by cash funding the reserve fund, i.e. setting aside a certain amount of the bond proceeds for purposes of funding the reserve requirement. Bids will be received on May 4 for the cost of the surety. The additional bonds test are legal covenants that govern the ability to issue obligations. Under the 1991 document provisions it must be proven that there are net revenues sufficient to one times the maximum annual obligation over the period. The adjusted net revenues are 1.01x. Under the 1991 provisions, the City is specifically excluded from including capacity or connection fees as revenues for purposes of calculating the additional bonds test. The documents do provide for the adjustment of the rate increase. The capital reserve is equal to roughly half of the ten-year average annual "pay as you go" funding. The operating reserve is targeting 15% of operating expenses. A meeting has been held with the rating agencies and a visit was made to the site. It is anticipated to price the bonds on May 12, which would allow closing on May 26.

In response to Council Member Hitchcock, Mr. Burnett reported that public disclosure information was provided to the rating agencies regarding the PCE/TCE and Lehman Brothers matters. They have not ascribed any negative credit consequences regarding it.

MOTION:

Mayor Hansen made a motion, Beckman second, to adopt Resolution No. 2004-78 approving forms of an Installment Purchase Contract, a Certificate Purchase Contract, Official Statement, and a Continuing Disclosure Agreement relating to Wastewater System Revenue Certificates of Participation, 2004 Series A; and approving and authorizing certain other matters relating thereto.

DISCUSSION:

Interim City Attorney Schwabauer noted that by approving this, Council is also approving certain other related matters thereto including administrative costs for issuing the financing, legal costs, Mr. Burnett's contract, etc.

VOTE:

The above motion carried by a unanimous vote.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hansen, Hitchcock second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

C. REGULAR CALENDAR (Continued)

- C-2 "Adopt resolution awarding the construction, testing and inspection, and construction administration contracts for White Slough Water Pollution Control Facility Year 2004 Improvements and appropriate Funds (\$10,108,000)"

Public Works Director Prima reported that plans and specifications for this project were approved on March 3. The bid opening for the construction contract was conducted on April 15. The apparent low bidder requested that his bid be withdrawn due to a significant mathematical error. Seven proposals were received on April 9 for the testing and inspection contract.

MOTION/ VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2004-79 awarding the construction contract for the White Slough Water Pollution Control Facility Year 2004 Improvements to Kirkwood-Bly, Inc., of Santa Rosa, and the testing and inspection contract to Krazen & Associates, of Modesto; authorizing the City Manager to contract with West Yost & Associates for construction administration services; and further appropriated funds in the amount of \$10,108,000 from the Wastewater Fund with the 2004 Certificates of Participation.

- C-3 "Approve additional Maintenance Worker position at White Slough Water Pollution Control Facility"

Public Works Director Prima reported that major amounts of equipment are being added to the White Slough facility. It is believed that no additional operations staff will be needed; however, one additional Maintenance Worker position is necessary. The cost has been included in the revenue program and in the rates that have been approved. It is hoped to have the position filled before installation of the equipment is completed. The equipment is expected to arrive in June.

Council Members Land and Hitchcock preferred to consider this request with the 2004-05 budget in June.

MOTION/ VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Howard second, unanimously approved an additional Maintenance Worker position at White Slough Water Pollution Control Facility.

- C-4 "Adopt urgency ordinance repealing and reenacting Lodi Municipal Code §13.04.130 establishing low-income discounts for water, sewer, and refuse services, and adopt resolution establishing discounts"

Public Works Director Prima explained that this item is being brought forward as an urgency ordinance because the increased rates will be effective in May. Under the normal process it would take a month before an ordinance would be effective and if the discount program began at a later date it could result in having to issue refunds. He suggested that if Council concurs with the notion of having the same eligibility criteria for all discount programs, the ordinance could be adopted tonight with the discount percentages brought back at a later date in a resolution. He recommended a discount of 30% on solid waste, 20% each on water and wastewater, and the senior fixed-income program at 5%.

Council Member Howard was not in support of making the eligibility greater or increasing the amount of discounts from the programs currently in place. She agreed with comments expressed earlier by Mr. Beckman and believed that assistance to the needy can be provided through volunteerism and other private service organizations.

Council Member Land recalled that it was previously recommended to model all the discount programs after Electric Utility's Single Household Alternative Rate for Energy (SHARE) program, which provides a 20% discount. He preferred that recipients be required to re-qualify for the discount periodically by providing documentation such as their income tax returns. He was in favor of standardizing the eligibility requirements for all the City's discount programs.

At the request of Council Member Hitchcock, Rebecca Areida, Public Works Management Analyst I, reviewed current eligibility requirements for discount programs.

Interim City Attorney Schwabauer suggested that language in the ordinance be amended as follows: 13.04.130 Low Income Adjustments, "The rates for residential water, sewer and refuse collection service as they now exist or may hereafter be modified under this chapter, shall be reduced as established by **resolution for those residential accounts in the names of persons meeting the income or senior fixed-income eligibility requirements** for..."

In response to Council Member Hitchcock, Revenue Manager Cadwallader, explained that the Electric Utility's State/County Home Energy Assistance Program (HEAP) accepts any income level documentation for eligibility purposes, e.g. W-2 form or SSI confirmation from the Social Security Office.

Mayor Hansen asked Mr. Prima to research the matter further and return to Council with a discount program that is meaningful, includes standard eligibility requirements, and is easily administered.

Mr. Prima commented that the current discounts, including 10% for solid waste, will continue to apply until changed by a new resolution.

MOTION/ VOTE:

There was no action taken on this matter.

D. MEETING OF THE LODI PUBLIC IMPROVEMENT CORPORATION

At 12:00 a.m., Mayor Hansen adjourned the Special City Council meeting to a meeting of the Lodi Public Improvement Corporation. Following the call to order, Secretary Blackston recorded roll.

- D-1 "Adopt resolution approving forms of an Installment Purchase Contract and a Trust Agreement relating to Wastewater System Revenue Certificates of Participation, 2004 Series A; and approving and authorizing certain other matters relating thereto"

MOTION / VOTE:

The Corporation, on motion of Vice President Beckman, Hansen second, unanimously adopted Resolution No. LPIC2004-01 approving forms of an Installment Purchase Contract and a Trust Agreement relating to Wastewater System Revenue Certificates of Participation, 2004 Series A; and approving and authorizing certain other matters relating thereto.

There being no further business, the meeting was adjourned at 12:01 a.m.

Mayor Hansen reconvened the City Council meeting at 12:01 a.m.

E. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:01 a.m., Wednesday, April 28, 2004.

ATTEST:

Susan J. Blackston
City Clerk